

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

23-CR-99-LJV

SIMON GOGOLACK, et al.,

Defendants.

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**RESPONSE IN OPPOSITION TO DEFENDANT HINKLE’S MOTION TO REOPEN  
DETENTION HEARING**

**THE UNITED STATES OF AMERICA**, by and through its attorneys, Trini E. Ross, United States Attorney for the Western District of New York, Joseph M. Tripi, Nicholas T. Cooper, and Casey L. Chalbeck, Assistant United States Attorneys, of counsel, hereby submits the following response in opposition to defendant Simon Gogolack’s motion to reopen the detention hearing. ECF No. 98, (dated Mar. 15, 2024).

**I. INTRODUCTION**

On February 2, 2024, the United States Court of Appeals for the Second Circuit denied defendant Howard Hinkle’s motion for release pending trial and affirmed U.S. District Judge John L. Sinatra’s detention order. *See* Order at 1, *United States v. Hinkle*, Case No. 23-7823, (dated Feb. 2, 2024) (“Upon due consideration, it is hereby ORDERED that Hinkle’s motion under docket number 23-7823 for release pending trial is DENIED and the district court’s order entered November 3, 2023 is AFFIRMED.”). Without so much as even mentioning the Second Circuit’s affirmance, Mr. Hinkle has once again moved for his release, this time citing that he is housed in the “trustee honor dorm” at the Chautauqua County jail. Mot. for Release of the

Def. on Reasonable Conditions, at 4 ¶ 10. This Court should deny Mr. Hinkle’s motion, as the “new” information identified neither bears on his risk of flight or, more importantly, the danger he poses to the community.

## **II. Factual Background**

### **A. The Complaint**

On October 24, 2023, pursuant to a federal search warrant, the Federal Bureau of Investigation conducted a search of Mr. Hinkle’s residence at 4290 Donovan Road in Alma, New York in connection with the death of Crystal Quinn. Owing to the FBI’s (well-founded) concerns that Mr. Hinkle would be armed and dangerous, an FBI SWAT team cleared Mr. Hinkle’s residence. Mr. Hinkle initially failed to follow the SWAT team’s instructions and acted in a manner consistent with that of someone contemplating an armed standoff. When Mr. Hinkle finally surrendered, the SWAT team discovered approximately 19 firearms—some of which were loaded—through his residence, in addition to a stockpile of ammunition, a large storage container of marijuana, and over 100 marijuana plants.

That same day, Mr. Hinkle was charged in a four-count Criminal Complaint. Specifically, Mr. Hinkle was charged with: (1) unlawfully possessing a firearm in violation of 18 U.S.C. § 922(g)(1); (2) maintaining a drug involved premises in violation of 21 U.S.C. § 856; (3) possession of marijuana with intent to distribute, and to distribute, 100 or more marijuana plants in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(vii); and (4) possessing a firearm in furtherance of drug trafficking crimes in violation of 18 U.S.C. § 924(c)(1)(A).

### **B. Judge Sinatra’s Detention Decision**

Following a lengthy detention hearing, Judge Sinatra ordered Mr. Hinkle detained pending trial. Judge Sinatra expressly considered, among other items of evidence, the following:

1. The “quantities of the plants and firearms” found in Mr. Hinkle’s residence;
2. “[T]he SWAT team’s effort to clear the residence” and the “difficult circumstances to clear the house,” as well as “the danger that [Mr. Hinkle’s] actions in sequence created”;
3. “[T]he placement of [Mr. Hinkle’s] weapons”;
4. “[T]he firearms in conjunction with the marijuana sales and in conjunction with the growing of marijuana,” both of which were in “conjunction with the felony” Mr. Hinkle had previously been convicted of;
5. Mr. Hinkle’s “questionable employment situation;”
6. Mr. Hinkle’s “mental health and substance abuse;” and
7. Mr. Hinkle’s prior “threat to kill his wife and himself.”

Det. Hr’g Tran. at 59–60 (attached as Exhibit A).

In view of the evidence proffered, Judge Sinatra found “by clear and convincing evidence that Mr. Hinkle’s release would pose a danger to the safety of others in the community, and that no condition or combination of conditions will assure the safety of others or the community if Mr. Hinkle were released pending trial.” *Id.* at 60–61.

### **C. The Second Superseding Indictment**

On January 5, 2024, a Grand Jury sitting in the Western District of New York found probable cause to believe that Mr. Hinkle conspired with others to obstruct justice; conspired to tamper with a federal witness; and conspired to retaliate against a federal witness. *See* Sec. Super. Indict., at 1–34, ECF No. 24 (dated Jan. 5, 2024). In addition, the Grand Jury found probable cause to believe that Mr. Hinkle committed the four narcotics and firearms offenses outlined in his Complaint. *See id.* at 43–45.

### III. LEGAL FRAMEWORK

Under the Bail Reform Act, a court has discretion to reopen a bail hearing if information comes to light that is both new and material to the detention question. *See United States v. Zhang*, 55 F.4th 141, 148 (2d Cir. 2022) (“As an initial matter, we emphasize that the Bail Reform Act states only that a hearing ‘may’ be reopened if new and material information is presented. The Act therefore leaves the decision to reopen a hearing to the sound discretion of the district court.” (internal citations omitted)). Specifically, a “hearing” “may be reopened” if:

the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a *material* bearing on the issue of whether there are conditions of release that will reasonably assure the *appearance of such person as required* and the safety of any other person and the community.

18 U.S.C. § 3142(f)(2)(B) (emphases added); *see United States v. Havens*, 487 F. Supp. 2d. 335, 339 (W.D.N.Y. 2007) (McCarthy, J.). The statute thus proposes two necessary conditions—(1) new evidence that is (2) material—a defendant (or the government) must satisfy prior to the Court reopening a detention hearing. *See United States v. Maxwell*, 527 F.Supp.3d 659, 663 (S.D.N.Y. 2021).

Relevant here is the “materiality inquiry,” which does not unfold within a vacuum but, rather, is tethered to “those facts that the court found consequential to its earlier detention decision.” *Zhang*, 55 F. 4th at 148. Not only is the materiality inquiry cabined to the Court’s prior detention decision, but it excludes from consideration the “defendant’s own evaluation of his character or the strength of the case against him.” *United States v. Quinones*, No. 13 CR 83S, 2016 WL 1694998, at \*1 (W.D.N.Y. Apr. 28, 2016) (emphasis added) (quoting *United States v. Jerdine*, No. 08 CR 0481, 2009 WL 4906564, at \*3 (N.D. Ohio Dec. 18, 2009)). Stated otherwise, the materiality inquiry is satisfied not by a small, contested quantum of novel

information but “truly changed circumstances, something unexpected, or [ ] significant event[s],” *id.*, that “increase the likelihood that the defendant will appear at trial” or “show that the defendant is less likely to pose a danger to the community,” *Watson*, 475 F. App’x at 600. *See also United States v. Bothra*, No. 20-1364, 2020 WL 2611545, at \*1 (6th Cir. May 21, 2020) (unpublished) (“Courts . . . requir[e] a showing of truly changed circumstances or a significant event.”).

#### IV. ANALYSIS

This Court should deny Mr. Hinkle’s motion because his membership in the trustee dorm does not “show that the defendant is less likely to pose a danger to the community,” *Watson*, 475 F. App’x at 600. Stated otherwise, though Mr. Hinkle’s “good behavior” in jail relates to his personal history and characteristics, it does not “relate in some *significant* or *essential* way to the decision” undergirding his detention—i.e., that Mr. Hinkle posed an unmitigable danger to the community. *United States v. Padilla*, No. CR 21-214 (JDB), 2023 WL 1964214, at \*8 (D.D.C. Feb. 13, 2023) (quoting *United States v. Worrell*, No. 1:21-CR-00292-RCL, 2021 WL 2366934, at \*8 (D.D.C. June 9, 2021) (emphases added)).

Put simply, that Mr. Hinkle has behaved well in jail does not mean that, in the absence of constant monitoring, he will cease to pose a danger to others. This is especially true given that a Grand Jury found that *outside* the confines of detention, Mr. Hinkle conspired with others to tamper with and retaliate against Crystal Quinn; unlawfully possessed firearms; and possessed a firearm in furtherance of drug trafficking, among other offenses. Because the Bail Reform Act is ultimately concerned on the safety risk the defendant poses to the public—as opposed to the prison community—other district courts have expressed doubt that a defendant’s “good behavior” while incarcerated is sufficient to re-open a detention hearing. *See, e.g., United States*

*v. Griswold*, No. 19-00032-01-CR-W-DGK, 2022 WL 3587359, at \*2 (W.D. Mo. Aug. 22, 2022) (“The Court finds the newly proffered information concerning an alleged mistake regarding the amount of PCP found on Defendant at the time of arrest and Defendant’s “good behavior” while detained does not provide a sufficient basis to reopen the detention hearing. Further, the newly proffered information has no material bearing on whether conditions exist that would reasonably assure the safety of the community or Defendant’s appearance in Court. Defendant is charged with serious offenses in the instant matter and faces a lengthy period of incarceration if convicted.”); *United States v. Crandell*, No. 19-CR-255 (JNE/TNL), 2020 WL 1873047, at \*2 (D. Minn. Apr. 15, 2020) (“Defendant also argues the fact that he now intends to plead guilty, combined with his good behavior while at the Sherburne County Jail, constitute changed circumstances that warrant his release under Section 3142(f)(2)(B). The Court disagrees. . . . Even if it did, his good behavior during the brief period in which he has been detained does not outweigh his extensive history of failing to appear for other court appearances. Defendant has therefore failed to meet his burden to justify reconsideration of his detention order under Section 3142(f)(2)(B).”); *Padilla*, No. CR 21-214 (JDB), 2023 WL 1964214, at \*8 n.4 (“It is also worth noting that this circumstance is true for every defendant who exhibits good behavior in custody. Every defendant’s family suffers in some way or another due to that defendant’s incarceration. But the Court certainly cannot grant every such defendant pretrial release from custody.”).

Moreover, Mr. Hinkle’s risk of flight has increased dramatically in the wake of the Second Superseding Indictment. Specifically, the lengthy prison sentence (life) Mr. Hinkle faces on the witness tampering and retaliation counts creates what the Second Circuit has recognized as a potent incentive to flee. *See, e.g., Zhang*, 55 F.4th at 150–51 (“Regarding the nature and circumstances of the offense charged, the district court observed that Congress has set a

mandatory minimum of life in prison for murder-for-hire, which creates an “extraordinary” risk of flight, particularly for a 34-year-old defendant such as Zhang. The prospect of a severe sentence can create a strong incentive for a defendant to flee and thereby avoid that sentence.”); *United States v. Khusanov*, 731 F. App’x 19, 21 (2d Cir. 2018) (unpublished) (“[E]ven if, as a practical matter, [the defendant’s] maximum sentence exposure were only 15, rather than 30, years’ imprisonment, that would still be sufficient to provide him with a strong incentive to flee.”); *United States v. Jackson*, 823 F.2d 4, 6–7 (2d Cir. 1987) (concluding that “indictment under which the defendant faces at least ten years of imprisonment” created risk of flight).

Considering the above, and in light of the Second Circuit’s recent denial of Mr. Hinkle’s release motion and Judge Sinatra’s well-reasoned detention decision, this Court should conclude that Mr. Hinkle has failed to meet his burden to reconsider Judge Sinatra’s detention order under § 3142(f).

## V. CONCLUSION

For the reasons set forth above, the government respectfully requests that the Court deny Mr. Hinkle’s Motion for Release (ECF No. 98).

DATED: Buffalo, New York, March 19, 2024.

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## Exhibit A

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, \*

Docket Number:  
1:23-MR-00469-JLS-1

v. \*

Buffalo, New York  
November 3, 2023  
3:03 p.m.

HOWARD HINKLE, JR., \*

ORAL ARGUMENT

Defendant. \*

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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The Courtroom Deputy:

KIRSTIE L. HENRY

1 The Court Reporter: BONNIE S. WEBER, RPR,  
2 Notary Public,  
3 Robert H. Jackson Courthouse,  
4 2 Niagara Square,  
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6 Bonnie\_Weber@nywd.uscourts.gov.

7  
8  
9 Proceedings recorded by mechanical stenography,  
10 transcript produced by computer.

11 (Proceedings commenced at 3:03 p.m.)

12 **THE CLERK:** All rise.

13 The United States District Court for the Western  
14 District of New York is now in session. The Honorable John  
15 Sinatra presiding.

16 **THE COURT:** Please be seated.

17 **THE CLERK:** United States versus Howard Hinkle, Jr.,  
18 Case Number 23-MR-469. We're here for oral argument.

19 Counsel, please state your appearances for the record.

20 **MS. CHALBECK:** Casey Chalbeck, Nicholas Cooper, and  
21 Joseph Tripi for the United States.

22 **MR. BOGULSKI:** Good afternoon, Judge. Frank Bogulski  
23 representing Howard Hinkle, Jr.

24 **THE COURT:** Okay. Good afternoon, Counsel. Good  
25 afternoon, Mr. Hinkle.

**MS. CHALBECK:** Good afternoon, Your Honor.

1           **MR. BOGULSKI:** Good afternoon, Judge.

2           **THE COURT:** These are the pictures that came through  
3 this afternoon by e-mail, Ms. Chalbeck?

4           **MS. CHALBECK:** Yes, Your Honor.

5           **THE COURT:** All right. We'll get to them when you  
6 want me to get to them. We're here today on the Government's  
7 motion to revoke Judge Roemer's release order.

8           My review is de novo. I have some questions, and  
9 then, obviously, if you've got the need to go beyond any of my  
10 questions, feel free to do that when it's appropriate, okay?

11           Let me start with the first question, in no particular  
12 order, really. But, Ms. Chalbeck, does the presumption apply in  
13 this case? And if so, why?

14           **MS. CHALBECK:** Yes, Your Honor. The presumption  
15 applies because Mr. Hinkle is charged with two offenses under  
16 the controlled substances act that carry a maximum term of  
17 imprisonment greater than ten years.

18           In addition, it applies because he faces a lifetime  
19 term of imprisonment on the charge under 18 U.S.C. 924(c).

20           **THE COURT:** Mr. Bogulski --

21           **MR. BOGULSKI:** Judge, I did argue this before  
22 Magistrate Roemer. I believe that the case is overcharged, Your  
23 Honor.

24           I think that -- I agree if it's a 924(c) as charged,  
25 however --

1           **THE COURT:** Well, that's why I'm asking. I read the  
2 transcript. And so -- you know, I have some follow-up questions  
3 based on how you argued it.

4           **MR. BOGULSKI:** Sure, Judge. But, yes. I agree that  
5 there is a presumption, which is a rebuttable presumption, as  
6 the Court is aware.

7           But, yes, that's my interpretation of the statute.

8           **THE COURT:** While we're on that topic, what is your  
9 way to rebut that presumption?

10          **MR. BOGULSKI:** Well, I mean, obviously, Judge Roemer  
11 did agree with me previously, Your Honor.

12           This case, when I think about it, I was driving --  
13 when I drive in -- I live in Hamburg. And when I drive in on  
14 Route 5 every day, I see at least three dispensaries.

15           I know that marijuana is still illegal in the Federal  
16 system. There is one on Clover -- on Route 5 in Clover Bank  
17 Road, right across from a daycare center.

18           Now, whether that's a good idea, I don't know. But  
19 there is one. And my children's school is a quarter mile from  
20 that. You can see the dispensary from Clover Bank Elementary  
21 School on Route 5.

22           Then I go through Woodlawn and there is another  
23 dispensary close, I believe, to some other schools. And then I  
24 drive through Lackawanna. It takes me about, you know, 15,  
25 20 minutes depending on traffic.

1           There is other one in Lackawanna right by a gas  
2   station. So, when I think about this case -- I've practiced law  
3   over 20-some years, I don't see a lot of 924(c) charges that  
4   pertain to marijuana, Your Honor.

5           And I don't think that -- there are some other text  
6   messages here that I received from the Government, that this is  
7   really a classic 924(c) case.

8           My client had some muskets, some other guns. I argued  
9   previously that basically a lot of people in Allegany County  
10   possess guns.

11          And I think the local law enforcement knew that my  
12   client was an avid sportsman. So, it's not just simply  
13   possessing guns.

14          It's also using those guns in furtherance of a  
15   conspiracy, Judge. Or possession with intent to distribute.  
16   And I don't think that that's applicable here, Your Honor.

17          And I also believe that there are conditions or  
18   combinations of conditions that would secure my client's  
19   presence in Court.

20          He doesn't have a passport, so he's not a flight risk.  
21   He's lived his whole life in the Wellsville area. And there are  
22   conditions that this Court set or that Magistrate Roemer set  
23   that are appropriate that would protect the public.

24          Other than a -- there was like a -- it looks like  
25   there was like a petty larceny or something pertaining to

1 cigarettes that I read in the Government's papers, my client had  
2 16 or 17 years of law abiding life.

3 He hadn't had any charges, and I think, you know, the  
4 probation department got it right when they recommended for his  
5 release.

6 I believe that -- and the Government has made it  
7 clear, they do -- are interested in my client for unrelated  
8 matters.

9 And that's clear in the filings that I've seen, but  
10 that's not what is properly before this Court. My client is not  
11 charged in any other case other than what is the case before  
12 this Court.

13 And we don't see a lot of Federal prosecutions for  
14 marijuana with a 924(c). At least I don't. Maybe they -- maybe  
15 they did in the past, but mostly it's cocaine, meth, Fentanyl,  
16 things like that.

17 And I point out the dispensaries because -- I haven't  
18 researched this, Judge, but I'm going to have to, obviously.  
19 But there is no lab report, number one, indicating, you know,  
20 they said there was a 130 plants.

21 I saw pictures of some plants. And speaking to my  
22 client and his family, he is a known user of marijuana, which it  
23 doesn't seem like this is a significant grow operation.

24 I can go in any one of those dispensaries, I presume,  
25 and find a lot more marijuana than was found in Mr. Hinkle's

1 trailer.

2           So, from my perspective -- I think, you know, the  
3 Government may have charged him with this because of the other  
4 matters, likely, in my view, but that's not what's before this  
5 Court. And that's not what is being litigated here.

6           So, based on my client's prolonged period of law  
7 abiding life, I don't think he's any danger to the public.

8           I think the Wellsville police knew that my client was  
9 an avid sportsman. And if any given time they wanted to arrest  
10 him for possessing a gun, because it's also illegal in New York  
11 to be a felon in possession, they could have arrested him.

12           And I would argue, Judge, that if they thought that he  
13 was a danger to the public, that my client in the small  
14 community like that, would have been brought in and charged with  
15 this, because it was probably common knowledge that my client  
16 had had guns.

17           Now, there has been a lot of a laser or something like  
18 that on a gun relative to an FBI or Government informant.

19           And my understanding is that is a flashlight on that  
20 gun that is used to illuminate predators. It's not a laser.  
21 There is a difference.

22           I mean, I'm not a gun expert, Judge. I have some  
23 limited military experience, but not a gun expert by any  
24 stretch.

25           But when I looked at the photos, Judge, this was a



1 flashlight -- like a red flashlight. And my client has pigs and  
2 peacocks and other animals in that area.

3 And even in Hamburg, I've seen coyotes at night. I've  
4 heard them, you know, in the creek behind my house.

5 And I don't have any pigs, but I could foresee a  
6 circumstance if you were involved in farming that -- you know,  
7 like, there is a reason why wolves are pretty much extinct or  
8 they are reintroducing them is they -- you know, my uncle has  
9 chickens and they eat chickens and people that live in country  
10 areas have farms and things like that.

11 And they will possess guns, not for selling marijuana  
12 or drugs, but either for hunting purposes -- very common in  
13 Allegany County, a lot of hunting camps there.

14 Or for the purpose of protecting their livestock and  
15 their pigs and so forth.

16 So I know somehow there is a hearsay statement or a  
17 statement about this laser, but if you look at the photo that  
18 the law enforcement had illuminated, it's a flashlight.

19 That case is not before this Court. So I believe that  
20 there are less restrictive means of handling this without  
21 putting my client in jail.

22 And those would be home incarceration or home  
23 detention, which Judge Roemer had ordered. And I know he  
24 thought very carefully about his decision, Judge, because I  
25 remember -- and I believe I put it in my papers that he had

1 asked the probation officer to come into his chambers.

2 He had called a ten-minute recess and he had talked to  
3 the probation officer about her report, which was recommending  
4 release.

5 And what was said, obviously, I don't know. I wasn't  
6 privy to that. But when he came out after talking extensively  
7 to the probation department, he decided that my client should be  
8 released.

9 And, obviously, there was a stay granted so we could  
10 talk about it further, but I don't think that decision should  
11 change.

12 And I know having appeared before Judge Roemer many  
13 times, just like Your Honor, he takes these matters very  
14 seriously -- very carefully.

15 And I would not say that he is easy -- when I mean  
16 easy, he detains people quite a bit. I've had him detain a lot  
17 of my clients.

18 Not always, but he is certainly not -- no one would  
19 ever say that Judge Roemer is a magistrate that routinely  
20 releases people.

21 I know -- you know, I won't get into specific names,  
22 but certain judges in State court, they have a reputation where  
23 they are very lenient, whether it be with sentencing or whether  
24 it be with release, even before bail reform in New York.

25 And that is not the case with Judge Roemer. I have a

1 lot of respect for Judge Roemer, but he's not someone that is --  
2 would -- anyone would say has a reputation that is going to  
3 release people all the time.

4 He had asked pointedly to the Government, when the  
5 Government stood up and they were talking about the other  
6 case -- it's very important to the Government, because I read  
7 about it and I'm going to have to start to learn about it.

8 It's a very big case for everybody, I guess, but he  
9 had said, what does that have to do with this case here for  
10 Mr. Hinkle?

11 And I would argue that -- and I don't know, it seemed  
12 like he didn't give that a lot of thought -- or not a lot of  
13 thought.

14 He gave it a lot of thought, but didn't give it a lot  
15 of credence because my client is not charged with that.

16 And I hope that he isn't charged with anything related  
17 to the other case that the Government has been talking about,  
18 about the informant.

19 So, from our perspective, the decision should stay.  
20 Judge thought about it carefully. The probation department made  
21 a recommendation that my client be released.

22 If my client's released, Judge, he has stability. As  
23 far as rebutting the presumption, he's not a risk of flight.

24 He's been with the same woman for many years. They  
25 have a son, and his son is to be married and he wants

1 grandchildren. And our view is that is a very reasonable  
2 request that he be under home incarceration.

3 I know how hard the probation department is on these  
4 matters, because I've had many clients violate those terms.

5 And I always tell them -- because there was another  
6 case I had a week or so ago that Judge Roemer let my client out.  
7 He had been charged with selling pills and the allegation was  
8 that two people died from Fentanyl, and Judge Roemer had let him  
9 out.

10 And I told my client, don't mess this up because it  
11 was a tough call for the judge. And I said, if you mess this  
12 up, like -- I know, like, in a second, like, he's going to put  
13 you in jail, in a second. And -- because it was a hard  
14 decision.

15 And that's the same thing here, Judge. This is always  
16 a hard decision for any judge to make, but my client is  
17 afforded, number one, the presumption of innocence in this case,  
18 which I think is overcharged.

19 I think it's a 922(g), that the Government could  
20 probably convict him of. But who knows, there may be more  
21 defenses.

22 But I think that if he's given a chance -- I've had an  
23 opportunity to talk to my client. He was in tears yesterday  
24 about this. He was crying. He wants to be with his common law  
25 wife.

1           He knows this is a very difficult circumstance for  
2 him. He knows the Government is looking at him. And I know the  
3 Government's looking at him.

4           You know the Government's looking at him. So he is in  
5 a very difficult spot. And so for him to try -- he's not a risk  
6 of any harm, especially with the strict conditions that the  
7 Court would set.

8           He's not opposed to those. That there would be no  
9 risk to the public, because there would be electronic  
10 monitoring.

11           There would be strict requirements as far as home  
12 inspections and things that the probation department does prior  
13 to putting someone on home incarceration, so the Court does not  
14 have to worry about that.

15           And the fact that there was 16 years before that  
16 Pennsylvania cigarette incident was larceny, my client paid  
17 restitution. I believe it was approximately \$9,800.

18           There is no risk to the public and he is no flight  
19 risk, because he doesn't go anywhere. He has no passport. He  
20 has no real means to leave the area. And he wants to be with  
21 his family and his son.

22           So for that reason, I believe that the -- I argued  
23 that the presumption continues to be rebutted. Nothing has  
24 really changed since we appeared before Judge Roemer.

25           And I wanted to be here today. I had a seminar,

1 because I want to try to get my client out of jail and do my  
2 job, Judge.

3 And I think that you should accept Magistrate Roemer's  
4 recommendation and release my client on those conditions that  
5 are very strict and see what -- you know, see what happens,  
6 obviously, but he is going to toe the line, Judge.

7 This is a very, very serious matter and he knows that.  
8 And he would be a fool to think otherwise.

9 **THE COURT:** So you've been, Mr. Bogulski, watching  
10 judges over time and a pretrial detention decision of a person  
11 who is innocent until proven guilty competes with a difficult  
12 sentencing decision all the time in terms of the hardest thing  
13 that we do here from the bench.

14 Because, here, you have got a situation where the  
15 Government is asking me to take someone's liberty away before  
16 they are guilty, and I have got to do that based on the  
17 considerations in the statute. I'm ultimately backstopped by  
18 the Constitution, right?

19 And a couple of times I've heard separate -- maybe  
20 it's related -- separate considerations, something that you said  
21 here today and something that you said in front of Judge Roemer,  
22 regarding interest that the Government might have in your client  
23 separate and apart from what's going on here.

24 And I have to say this: Look, we don't, as judges  
25 here, don't and shouldn't and don't think about collateral

1 consequences.

2 In other words, this decision is going to get made on  
3 the record that's in front of me. And it's not going to be --  
4 I'm not going to weigh, gee, does this give the Government an  
5 advantage or does this give the defendant an advantage maybe  
6 later for plea negotiations, for example.

7 Not relevant to me. What's relevant to me is the  
8 factors in the statute and whether there's a concern about  
9 safety or flight or nonappearance.

10 Okay. So that being said, I've got more questions for  
11 both of you. And there is a lot there, Mr. Bogulski, so it kind  
12 of covers the waterfront on your end. But, obviously, chime in  
13 as we go here.

14 Should I be concerned about the threat that your  
15 client made to kill his wife and then kill himself?

16 Because I've got to worry about nonappearance for him  
17 and I've got to worry about danger to the community vis-à-vis  
18 other people that he might threaten to shoot.

19 **MR. BOGULSKI:** Judge, I spoke to my client about that.  
20 Finally had a chance to speak to him, because when I first came  
21 on this case, I wasn't aware of that, Judge.

22 And I looked at that very carefully. And my client  
23 was -- he was put in a psychiatric hold for 72 hours at Olean  
24 Hospital, is my understanding in speaking to him.

25 And I was concerned about that, too, because I know

1 that -- I figured you were going to ask me about that because it  
2 jumped out at me when I saw the Government papers.

3 So I made some changes to my schedule and I went to  
4 talk to him yesterday, because I figured, you know, I better  
5 have an answer for the judge, because he's going to probably ask  
6 me about that.

7 And my client's father died a couple years ago and,  
8 you know, he had a hard time with that. And when we were  
9 talking, he said there was a lot of support that he had from  
10 other people and he wasn't spending a lot of time with his wife.

11 And so he was released from Olean Hospital and he was  
12 put into counselling. And he sees -- I don't know if it's a  
13 psychiatrist. I haven't had a chance to get a HIPAA signed.  
14 But he goes to counselling, Judge.

15 And, you know, obviously, there were no charges  
16 brought in that situation. I think that if there were charges  
17 that could have been brought, I mean, probably if that was true,  
18 my client said he -- he denies the -- the details of those, but  
19 certainly the fact that he is in counselling; that he was  
20 released; that he was found to be not a danger to himself or  
21 others by a medical doctor, Judge, should alleviate any concerns  
22 that the Court would have.

23 Because there's -- the doctor -- you know, they are  
24 not going to release someone if they feel that they are an  
25 imminent threat to the public.



1           So he was released, and I think it's good news for him  
2   that he is getting counselling. We talked about it yesterday.

3           Now, obviously if you release him, he's going to have  
4   to sign a release and there will be no -- first of all, there  
5   will be no guns in the house, number one.

6           Number two, he will be in counselling. I know when  
7   people are released they are -- they are often required to  
8   undergo a drug or substance abuse evaluation and a mental health  
9   evaluation. And, obviously, his wife and child support him.

10          Now, people go through different times -- difficult  
11   times and handle grief differently, but I think, from my  
12   perspective, it's positive that he's in counselling.

13          And I asked him yesterday -- I said, so, did you do,  
14   like, anything after that -- you are in counselling? And he  
15   said, yes. He said, I'm still in counselling.

16          And I think that's a good thing. And the fact that  
17   there will be no guns or anything around, I think that would  
18   allay any concerns.

19          And the fact that he's been cleared by at least one  
20   medical doctor, I don't know if it's still the law, like, I  
21   haven't practiced -- like, Article 81, mental hygiene law.

22          I'm sure you remember, obviously, from private  
23   practice, Judge. But I think it's two doctors have to sign  
24   off -- or at least one, medical doctors to release him.

25          So he was put in a 72-hour hold. He was released and

1 he is involved in counselling.

2 So that, to me, is a positive thing rather than a  
3 negative. Because we have a lot of people walking around that  
4 are crazy.

5 And I see it every day when I go see clients in jail  
6 or in Court and they are not under the care of a medical doctor,  
7 they are not getting counselling.

8 The fact that my client has been, as he's reported to  
9 me, and I haven't corroborated this, active and compliant with  
10 his mental health treatment, should be reassuring to the Court,  
11 because that means that he is being proactive in dealing with  
12 what he needs to deal with.

13 **THE COURT:** Ms. Chalbeck, what about this extraneous  
14 or collateral concern that Mr. Bogulski points out that the  
15 Government has related to the witness who died and had --  
16 allegedly had a price on her head, does that bear on release  
17 versus detention here?

18 And if so, why?

19 **MS. CHALBECK:** Your Honor, you were absolutely correct  
20 earlier when you stated that your considerations are determined  
21 by the statute.

22 However, in interpreting the statute, the Bail Reform  
23 Act 18 U.S.C. 3142, the Second Circuit has rejected at this  
24 point multiple times the argument that you may not consider  
25 uncharged conduct.

1           And I would point the Court in the direction of United  
2 States versus Rodriguez, that's 950 F.2nd 85 and 88, Second  
3 Circuit 1999 -- 1991, excuse me, where the Second Circuit  
4 reserved a District Court's release while rejecting the argument  
5 that courts are limited to considering only that conduct, quote,  
6 connected to the activity charged, end quote.

7           And likewise, a panel of the Second Circuit affirmed a  
8 detention order based in part on uncharged criminal conduct in  
9 United States versus Barone --

10           **THE COURT:** I know that I can consider it. Why is it  
11 relevant here?

12           **MS. CHALBECK:** It flows directly from the history and  
13 characteristics of the defendant.

14           So, in particular, Your Honor, I can just provide a  
15 little bit more factual background without getting too much into  
16 the facts, because the investigation into Ms. Quinn's death  
17 remains ongoing and is very sensitive.

18           During an FBI interview, Simon Gogolack, who has been  
19 indicted separately before Your Honor, Simon Gogolack told the  
20 FBI that Mr. Hinkle told Ms. Quinn at a card game that there was  
21 money on her head. In other words, a bounty on her life.

22           And the Government's view that underscores  
23 Mr. Hinkle's connection to a dangerous criminal underworld, to  
24 include motorcycle clubs, we would proffer, and it evidences his  
25 knowledge of plots to kill Federal witnesses.

1           And what does he do with that knowledge? He doesn't  
2     report it to the police. He discloses it to a Federal witness,  
3     and just days later, she dies.

4           We think that that bears on the history and  
5     characteristics of the defendant. That he has this knowledge.  
6     That he has the social connections to give him this knowledge,  
7     and that instead of reporting it to the police, he says to the  
8     witness what he says.

9           **THE COURT:** So, Mr. Bogulski, why doesn't that fact  
10    pattern go into the scales of justice, if you will, on one side  
11    or the other?

12          **MR. BOGULSKI:** Judge, if it was true, then I think  
13    absolutely it goes to your consideration, as you pointed out  
14    correctly, you can.

15          But you have to consider the source of that. Simon  
16    Gogolack was the one who woke up dead. Or not dead. Woke up  
17    next to the witness that was dead.

18          And people -- and I've heard the Government make this  
19    argument many times, whether it's State Court or Federal Court.

20          He wakes up with a Federal witness, who is dead. And  
21    he is likely to say, Gogolack is going to try to deflect blame  
22    from himself, right?

23          He doesn't take responsibility and say that he's  
24    responsible for that. It's easy to blame someone else.

25          My understanding, Judge, from talking to some

1 different people, is that there was a card game and that my  
2 client was, I believe, present with Gogolack and the decedent,  
3 but there was nothing talked about as far as anyone being a  
4 witness.

5 And that Gogolack and the decedent were high on many  
6 drugs at that time. They were drinking heavily, which would be  
7 consistent with the Wellsville police chief.

8 I read the Buffalo News article today, and I don't  
9 know, that's hearsay. And I haven't talked to the Wellsville  
10 police chief.

11 But the Wellsville police chief was quoted in the  
12 Buffalo News saying that there was nothing suspicious about the  
13 death of the witness, okay?

14 So, this person and -- is probably in a very good  
15 position, being a local police chief, to know best what's going  
16 on in his community.

17 And now, the Government -- obviously, they have a  
18 right to differ. That's their case. And that's fine. But I  
19 dispute -- my client disputes the veracity of that statement.

20 Because when you charge a jury, you talk about an  
21 interested witness. There is a jury charge. Does the witness  
22 have an interest in the outcome of the case?

23 If Mr. Gogolack takes the witness stand here, okay,  
24 and I'm cross-examining him, I'm going to ask him about the girl  
25 that woke up dead.

1           And I'm going to ask him about whether he used drugs.  
2           And I'm going to ask him if he used drugs with the witness, and  
3           I'm going to ask him if he has an interest in his testimony.

4           And I would argue he's an interested witness. And I  
5           have never met him, but I imagine that he has an interest in  
6           deflecting blame from himself from the situation that he finds  
7           himself in.

8           And it would not be unusual for him or any other  
9           person that has an interest to misrepresent the facts.

10          My client denies pointing a gun at anyone. He denies  
11          being involved in any of this. He's not charged with it. And I  
12          certainly question the veracity of that witness.

13          And I do point out the Buffalo News article, where I  
14          think it was -- where it was said that the Wellsville police  
15          chief said that the person died of Fentanyl or drugs. I don't  
16          remember, because I was at a seminar today, Judge, before I came  
17          here.

18          And I remember being in the National Guard and going  
19          to the ice storm in the north country, rural area like  
20          Wellsville.

21          And one of the first things, Judge, I did was I talked  
22          to all the fire chiefs in every town, whether it be Chateaugay  
23          or Bombay, because those people, in my experience, could tell me  
24          where the families that need help, who needs food, who needs  
25          shelter, who is dangerous, who is this, who is that.

1           So every one of our squads would be sent to a fire  
2 chief and I'd say, work with that fire chief.

3           And I bring that to the Court's attention because the  
4 Wellsville police chief, I imagine, cares very deeply for his  
5 community. He cares very deeply for the people that he serves.

6           And you don't -- you go into being a police chief or  
7 law enforcement, I believe, 99 percent of the people that are  
8 involved in law enforcement are in it for the right reasons.

9           The same way the FBI, the same way that the Government  
10 is. And I have no reason to believe that that police chief in  
11 his small community, when he knows everyone's looking at him, is  
12 going to go on record to the Buffalo News and say that he  
13 believes that that witness died of Fentanyl or whatever, and  
14 that there were no suspicious circumstances.

15           Now, obviously, the Government disagrees with the  
16 Wellsville police chief, but the question you asked me is  
17 considering what the Government has said about my client's  
18 purported involvement in the death of this witness.

19           I talked to him yesterday and he -- he was surprised,  
20 the best way I could say it, because he thought it was a  
21 marijuana case and now I'm talking to him about something else.

22           He denies involvement in that. He knows Gogolack, and  
23 he's done work with him. He also denies being in a biker gang.  
24 I'm looking at him -- I mean, I don't see any gang tattoos on  
25 his arms.

1           He tells me he inherited or his father gave him a  
2   Harley Davidson when he died or something like that. He's not  
3   in a biker gang.

4           He has the same spouse for 25 years and a son. He's  
5   not traveling around with the Hells Angels and going to biker  
6   fest and concerts or whatever these biker guys do.

7           He's a guy that sticks around Wellsville. Biker gangs  
8   travel and do biker gang stuff. And that -- our view, because  
9   they found a motorcycle at his house?

10          I think Warren Buffet owns a motorcycle and is an avid  
11   motorcyclist, so that doesn't make him like a biker gang guy.

12          **THE COURT:** All right.

13          Ms. Chalbeck, anything else I need to think about  
14   regarding this issue about the bounty before we move on to drugs  
15   and guns?

16          **MS. CHALBECK:** Your Honor, I would like to put up  
17   Exhibit No. 35 on the Elmo, and just provide a little bit  
18   additional context to the Government's investigation in this  
19   regard.

20          **THE COURT:** Go ahead.

21          **MS. CHALBECK:** When Simon Gogolack -- he brought her  
22   directly to a card game, which Hinkle was present.

23          And then during that card game -- apologies -- during  
24   that card game or shortly after, Gogolack and Hinkle left,  
25   leaving Ms. Quinn behind.



1 I'll state for the record, Your Honor, that this is  
2 Government's Exhibit 35. And it contains two photographs taken  
3 from a security camera footage.

4 **THE COURT:** Are these filed for the docket for going  
5 forward purposes?

6 **MS. CHALBECK:** Yes, Your Honor. We will publically  
7 file them on the docket.

8 **THE COURT:** All right. Well, they need to be filed  
9 under seal at a minimum, so if the Circuit ever looks at this,  
10 it's got to be on the -- okay. Under seal is fine as long as  
11 they are filed.

12 **MR. BOGULSKI:** Thank you.

13 **THE COURT:** All right. Go ahead.

14 **MS. CHALBECK:** So these images show Hinkle and  
15 Gogolack on the right. This is the top image that I'm  
16 describing.

17 Quinn is left behind in the grass. And then the  
18 bottom image shows just around the corner of this red trailer  
19 shows Hinkle and Gogolack walking and discussing with each  
20 other -- I presume, while Quinn is behind, some distance away.

21 And this occurred right after Mr. Gogolack brought  
22 Ms. Quinn to Wellsville.

23 And just on the issue of Ms. Quinn's death, she died  
24 with 1200 nanograms per milliliter of Fentanyl in her system.  
25 That is 400 times the legal dose of Fentanyl.

1           It is enough to kill everybody in this Courtroom.  
2       Probably everyone in this building multiple times over.

3           She was not known to be a heroin user or Fentanyl  
4       user. She was not known to be suicidal when this occurred. And  
5       Mr. Hinkle was one of the last people to see Ms. Quinn.

6           And video footage shows him having a private  
7       conversation with Mr. Gogolack. I cannot offer any additional  
8       details into the investigation at this moment, but we think that  
9       this goes to the history and characteristics of Mr. Hinkle.

10          And, Your Honor, I'm sorry, I -- just one additional  
11       detail. A second witness has corroborated Mr. Hinkle having  
12       disclosed that there was money on Crystal Quinn's head.

13               **THE COURT:** All right. Who is -- hold on a second,  
14       Mr. Bogulski.

15          Who is telling us who each of these people is in this  
16       picture? Is there an agent that is telling us that through your  
17       proffer or is Mr. Gogolack telling us who each of these three  
18       people is?

19               **MS. CHALBECK:** That would be an FBI agent, Your Honor.

20               **THE COURT:** All right. Mr. Bogulski, regarding the  
21       second person corroborating the price on this witness's head?

22               **MR. BOGULSKI:** Judge, I mean, it's the first that I  
23       heard that. I don't know who that person is. That person's not  
24       here.

25               **THE COURT:** Well, neither do I, Frank, but it's a

1 proffer from the Government, right?

2 **MR. BOGULSKI:** Well, if someone were to say that, that  
3 by itself is not illegal, Judge.

4 If someone were to say that the Government is looking  
5 to prosecute Al Capone and that some gangster had a price on Al  
6 Capone's head, because he's a rival gang -- I'm just giving a  
7 hypothetical here, Judge -- that by itself is not illegal.

8 If someone said to, you know, Mr. Hinkle that this  
9 witness has a price on her head and he says that, it may even be  
10 argue -- he denies saying it, but this is for a hypothetical  
11 because he denies saying that, he is not -- the Government isn't  
12 proffering that my client is saying, we put a price, you know, a  
13 price on your head.

14 It could be friendly. It could be get out of town.  
15 There is a -- you know what I'm saying?

16 So the way that I -- look, there is two ways to look  
17 at it. The nefarious way to look at it is the way the  
18 Government has proffered it, is that my client said this: That  
19 there is a price on your head and he has some interest in that.  
20 That's number one.

21 Number two, the other way to look at it is, wow, you  
22 should be careful. There is a price on your head. And it's all  
23 in the delivery, Judge.

24 But I will acknowledge that in that photo -- because I  
25 just asked my client as I'm sitting here, Judge -- you know,

1 because that's a good question, because when I saw that, is that  
2 him?

3 My understanding is yes. There was a game. And my  
4 client's father and uncle had owned a junkyard for 30 years, and  
5 my client is mechanically inclined.

6 And Gogolack said the young lady's brakes were  
7 rattling, so they went out to take a look at the brakes, because  
8 my client has mechanical knowledge.

9 And to me, that is not illegal. If you took a picture  
10 of someone at a fire hall -- because it's obviously a fire hall  
11 with the baseball diamond, there is nothing nefarious about the  
12 picture.

13 He has mechanical knowledge. He said she had, like, a  
14 small car of some sort. To me, he's looking at a car.

15 And the death was on a Tuesday. This was on a  
16 Thursday, Judge. So there is a card game -- I guess a  
17 longstanding card game at this fire hall on a Thursday.

18 The death is on a Tuesday. So there is no allegation  
19 that my client sold any drugs. The Government hasn't proffered  
20 that.

21 We have -- there is a First Amendment freedom of  
22 association, Judge, that really has to be strongly considered  
23 here.

24 And my client has not been charged with that. And  
25 they are not saying that he made that threat that I can see.

1           **THE COURT:** All right. We've been going on some  
2 tangents in a couple of different ways.

3           Back to the -- this is the Government's motion. Why,  
4 Ms. Chalbeck, in your view did -- why are the conditions that  
5 Judge Roemer imposed insufficient to protect the community,  
6 insufficient to make sure that this defendant appears in Court  
7 going forward?

8           **MS. CHALBECK:** Your Honor, in the transcript, Judge  
9 Roemer applied a location restriction program to Mr. Hinkle, but  
10 Mr. Hinkle's base of criminality is his home.

11           It is his community in Wellsville. We see that in the  
12 exhibits that the Government has offered.

13           Mr. Hinkle has used his home as the base for his drug  
14 distribution operation, which he protects with 19 firearms, some  
15 of which were loaded and that are strategically or were  
16 strategically located at points of ingress and egress.

17           And perhaps defense will argue, well, all of his  
18 marijuana was seized, but there -- the text messages show that  
19 Mr. Hinkle has extensive drug contacts.

20           He could easily get marijuana, start -- resume his  
21 growing operation. And his property is situated in such a way  
22 that it would be difficult to detect whether Mr. Hinkle was  
23 actually complying with any condition to avoid drug behavior.

24           And we also know that he has associates with people  
25 like Mr. Gogolack, who have sold firearms or put themselves out

1 to sell firearms unlawfully.

2 We know that despite being a felon, he has been able  
3 to acquire 19 firearms.

4 And so, given that his home is the base of his  
5 criminality, putting him on home confinement or home detention,  
6 restricting his activity to the home area is not a condition or  
7 a set of conditions that will mitigate the danger that comes  
8 from him being in the home.

9 One second, Your Honor. In addition, Mr. Hinkle's  
10 conduct with law enforcement also gives us concern that he could  
11 pose a threat to probation.

12 And in kind of elucidating that concern, I would like  
13 to provide some context into the execution of the search warrant  
14 here.

15 The FBI, owing to their concern that Mr. Hinkle would  
16 be armed and dangerous, used a SWAT team to do a clearance of  
17 the residence at 4290 Donovan Avenue at 6:00 a.m. on the 24th.

18 Mr. -- the SWAT team, excuse me, used flash grenades  
19 and announced their presence over a loud megaphone.

20 Despite that, there was an appreciable period and  
21 multiple flash grenades that had to be used before Mr. Hinkle  
22 finally emerged from the residence.

23 When he did finally emerge, he made furtive gestures,  
24 suspicious movements. At one point it appears that he tried to  
25 take control of an FBI drone that was used to kind of ensure

1 agent safety.

2 And in particular, he made a movement towards the  
3 inside of his residence before ultimately deciding against that.

4 When the SWAT team later cleared the residence they  
5 found, just feet away from where Mr. Hinkle was, a firearm by  
6 the door. Again, strategically located at a point of ingress  
7 and egress.

8 And I spoke with one of the SWAT team members, Agent  
9 Thomas Weiss, who is sitting behind me. He has engaged in  
10 between 50 and 100 SWAT operations.

11 I asked him what he made of Mr. Hinkle's movements,  
12 his behavior during this, like, tense period. Agent Weiss  
13 advised me that Mr. Hinkle's movements were consistent with that  
14 of somebody contemplating an armed standoff with the FBI.

15 And that was not the end of Mr. Hinkle's noncompliant  
16 and vulgar behavior with law enforcement that day.

17 At another point, Mr. Hinkle asked a -- or solicited a  
18 young female agent, younger than me, Your Honor, he asked her to  
19 hold his penis to help him urinate.

20 And I think that that evidences his -- his disdain or  
21 his noncompliant approach with law enforcement, and goes to the  
22 concerns that we have for probation in conducting home  
23 inspections and trying to ensure that he is complying with the  
24 conditions of his release.

25 **THE COURT:** Tell me more. The one new thing that I've

1 heard here that I didn't see already in the transcript and in  
2 your papers is about the drone.

3 What are we talking about there? What did I miss?

4 **MS. CHALBECK:** There -- I reviewed the body camera  
5 footage, which I am not proffering today, but the -- or the  
6 footage itself.

7 At one point an agent says: He's got my drone. Tell  
8 him to let my drone go. Something to that effect, in sum and  
9 substance.

10 **MR. BOGULSKI:** Judge, I just spoke to my client about  
11 that and he said the drone hit him in the head.

12 So if the drone was flying around and it hit him in  
13 the head -- so I think anyone -- it's a natural reaction if you  
14 had a drone hit you in the head, you're going to swat at it.

15 **THE COURT:** All right. I understand your -- and I  
16 remember when you said it to Judge Roemer that if they came to  
17 clear your house, it might take you some time to amble out of  
18 bed and get to the front door.

19 Okay. I get that part. Maybe your first movements  
20 wouldn't be right towards the front door, I think is what you  
21 said, something along those lines. All right. I get it, okay?

22 But what about this hesitation at the door and this  
23 maybe half motion back in -- inside?

24 **MR. BOGULSKI:** Judge, I mean, that's a subjective  
25 analysis. I mean, these things happen pretty quickly.



1 I know, like, if you are to come to someone's house,  
2 you know, his wife is there. You know -- I don't know, like, I  
3 didn't ask him, but it's his wife, you know, what's going on?

4 I mean, anyone -- any person at 5:00 or 6:00 in the  
5 morning, if there is a flash grenades that get thrown in  
6 anyone's house, they are going to be scared out of their mind.

7 This is not like a Waco, Texas thing. The Government  
8 said my client made furvative (sic) movements. They never said  
9 he walked out with a gun.

10 His house is under one thousand square feet, so the  
11 Government has made a big tadoo about guns placed strategically.

12 He has a small house, okay? It's not the Taj Mahal.  
13 It's a not a 6,000 square foot mansion. It is a small home. He  
14 lives in a rural area.

15 So if there is a flash grenade, it takes a couple  
16 minutes or whatever to come to the door. And his wife or  
17 whatever may have said something -- I think in the state of  
18 confusion -- that's why tactically, Judge, I mean, they -- you  
19 know, that SWAT or an Army, it's military operations in urban  
20 terrain, they are trained to hit someone when they do a raid to  
21 catch someone off guard.

22 That's the reason why law enforcement or FBI does  
23 that, because they don't want any resistance.

24 And clearly -- clearly, any one -- and my client  
25 included, any one of us is caught off guard, the first reaction

1 is not to run out with your hands up when someone throws a flash  
2 grenade.

3 He doesn't know that he's under investigation. They  
4 didn't call him up and say: Hey, can you come down and talk to  
5 us?

6 They would have had -- I think the Government's  
7 argument would be stronger if they showed that he knew that he  
8 was under investigation. That he refused to talk to them.

9 Then maybe they knew they were at his house or at his  
10 door with a flash grenade, or maybe if he grabbed a gun, but  
11 they're not saying that he did any of that. And that's a  
12 subjective analysis.

13 And I'm not blaming the SWAT officer, because a lot of  
14 times hindsight is 20/20. You will see a police involved  
15 shooting and you will see a policeman that shoots someone  
16 because they misinterpreted a furtive movement, they are  
17 grabbing a phone or whatever and you have an officer whose heart  
18 rate is elevated.

19 Because I've read studies about that, the higher  
20 someone's heart rate is, the more likely for police involved  
21 shooting, because their adrenaline is high, too.

22 So I know they're highly trained, but that's their  
23 objective, is to catch you off guard. He got caught off guard.

24 He didn't come out shooting. He didn't -- you know,  
25 the Government's argument is he has so many guns, he's

1 dangerous.

2 Well, he didn't throw a gun to his wife and he didn't  
3 pull one on the FBI and start shooting and engage in a standoff  
4 like they had in Waco with ATF.

5 He came out. A drone hit him in the head, you know.  
6 I think it went very well for the FBI, actually.

7 I mean, they did a good job. They got him out of the  
8 house. Nobody got hurt. Fortunately, the drone hit him in the  
9 head, but he came out. He's here, in one piece.

10 He didn't get hurt. The police didn't get hurt. That  
11 is a good thing, I think.

12 **THE COURT:** Ms. Chalbeck, it looked like you were  
13 going to respond to that. Go ahead.

14 **MS. CHALBECK:** Thank you, Your Honor. In Agent  
15 Weiss's experience -- and again, he's done over 50 to a hundred  
16 SWAT operations, Mr. Hinkle took an appreciable and unusual  
17 amount of time to exit the residence.

18 And when he did exit the residence, he was not  
19 complying with police or SWAT demands. They were demanding that  
20 he put his hands up; that he step out of the residence. He was  
21 not doing that.

22 They directed him to keep his hands in the air. He  
23 put his hands down. That behavior, in the agent's view -- in  
24 the agent's experience and in training was unusual.

25 And the situation on the ground was so tense that

1 another agent asked if he had a shot on him. They were  
2 concerned -- appreciably concerned that Mr. Hinkle was  
3 contemplating an armed standoff. And indeed, a weapon was just  
4 feet away.

5 In addition, Your Honor, I would like to state that  
6 when Mr. Hinkle was later interacting with law enforcement, he  
7 made a comment that kind of undercuts defense counsel's argument  
8 that he did not suspect that he was under investigation.

9 That comment specifically was unprompted. It was  
10 unsolicited. No one had brought the -- Ms. Quinn's name up at  
11 this point in the affair.

12 Mr. Hinkle stated something to the effect of, or in  
13 sum and substance of: I didn't even know that girl. I met her  
14 once.

15 And that evidences that he was considering that he  
16 could be under investigation in connection with her death. He  
17 brought it up unsolicited to law enforcement.

18 **THE COURT:** All right. Last word, Mr. Bogulski, then  
19 we're moving on to marijuana.

20 **MR. BOGULSKI:** Pardon me, Judge?

21 **THE COURT:** Last word on that topic, and then we're  
22 moving on to marijuana.

23 **MR. BOGULSKI:** Sure, Judge. My client was just  
24 whispering to me, you saw, when they were talking about him  
25 coming out of the house.

1           He said he sleeps, like, naked. His wife had very  
2 little clothes on. People -- you know, I guess if you look at  
3 the night before Christmas, we read to our kids, mamma in her  
4 kerchief and I in my cap, he said he didn't have a lot of  
5 clothes on or he was naked.

6           There is a flash grenade. He's there with his wife.  
7 I mean, people don't come running to the door very quickly and  
8 he said he was scared. And I believe that he was scared.

9           So relative to that, it's a subjective point of the  
10 FBI. There's no allegation that he grabbed a gun. He could  
11 have grabbed a lot of guns.

12           There's no allegation that he threatened anyone with a  
13 gun. It's an agent's interpretation of how he came out of the  
14 house, which I think should be given very little consideration  
15 by the Court, because if he's released, he's gonna -- look, if  
16 he had -- if there was a time when he was going to use a gun,  
17 Judge, it's not going to be when he's out, when he's under  
18 supervision of the probation department, when they were doing a  
19 home visit. It's when the SWAT team is there, Judge.

20           So that should allay any concerns of safety to the  
21 public. And that certainly would explain his behavior and  
22 reluctance to come out of the house.

23           I think any reasonable person that gets flash grenades  
24 and, as the Government acknowledges, a very tense situation,  
25 they have to confront that. They are going to be scared. And I

1 think that it's great that no one was hurt.

2           **THE COURT:** So 134 marijuana plants, Mr. Bogulski, is  
3 this his last grow? Is that what I'm supposed to believe?

4           That he's grown all he needs for the rest of his life  
5 now and then he's good?

6           What are you doing with 134 plants?

7           **MR. BOGULSKI:** Judge, I liken it to tomatoes or  
8 peppers that people grow.

9           You grow tomato plants and people grow vegetables, and  
10 sometimes they are bountiful -- or raspberries or strawberries.

11           Number one, my client disputes the amount of plants  
12 that were grown. It just depends on how you define that.

13           A lot of times in these cases, Judge, we'll have a lab  
14 report from the -- from a lab indicating the amount or the  
15 weight of marijuana.

16           Clearly, my client has an interest in growing  
17 marijuana. There is no question about it. But number -- I  
18 mean, and there are -- to me, I'd like to see what the lab  
19 report is, as I wrote in my papers.

20           He had some jars and I think that -- you know, from my  
21 perspective, it's a small community. The Wellsville police -- I  
22 looked at the photos of some of the plants in his yard. It  
23 didn't look like he was trying to hide them in any type of way.

24           And there are Constitutional issues now, I would  
25 argue, Judge, with 924(c).

1           Let's say he was involved in selling marijuana, like,  
2   as I said, I drive down -- I mean, I drive down Route 5 and I  
3   see at least three dispensaries.

4           When I go to the Cattaraugus Community Center to take  
5   my son to hockey practice, my kids ask me what's a dispensary?

6           And my point is is there are -- there's far more in  
7   any given dispensary than whatever plants were in his trailer, I  
8   would argue.

9           **THE COURT:** Well, maybe so, Mr. Bogulski, but Congress  
10   gets to decide what's on the books in terms of the Federal drug  
11   laws, doesn't it?

12          **MR. BOGULSKI:** Absolutely, 100 percent agree with you,  
13   Judge.

14          But I do think there are going to be -- I mean,  
15   obviously, we will be litigating this in the future.

16          Hopefully not in this case, Judge, the Constitutional  
17   considerations based on the legalization of marijuana. And I'm  
18   sure Congress will have to look at that as well, because we have  
19   a disparity in states. You know, some states have legal  
20   marijuana, some don't.

21          But yes, I agree. I don't think that it's a classic  
22   case of a 924(c), as I previously argued, Judge, where it's  
23   usually Fentanyl or cocaine or other drugs, but my client is an  
24   avid marijuana user.

25          You know, I don't think there is any allegation that

1 he has got kilos of this stuff that he's moving. I would like  
2 to see the lab report after this is done.

3 **THE COURT:** Ms. Chalbeck, there is something in the  
4 pictures you probably want to show me. I was looking at the  
5 pictures.

6 And there is pictures of marijuana -- I guess,  
7 marijuana plants, marijuana -- harvested marijuana, et cetera.

8 But there are also some text messages and I'm assuming  
9 that's what we're going to hear about next, but is he selling  
10 marijuana?

11 Is that what you're telling us?

12 **MS. CHALBECK:** Yes, Your Honor. We have ample  
13 evidence that he distributes marijuana. That this is not all  
14 for personal consumption.

15 **THE COURT:** All right. So what's he's doing?

16 **MS. CHALBECK:** I just want to note, Your Honor, this  
17 is Government's Exhibit Number 7. This is a strain of  
18 marijuana, apparently candy chunks that Mr. Hinkle has labeled.

19 We have evidence to believe that -- or reason to  
20 believe that he labels this as part of the marketing scheme to  
21 market and sell his products.

22 This is Government's Exhibit Number 9. As you can see  
23 in this photo, there are multiple marijuana plants pictured.

24 There was, in fact, so much marijuana recovered from  
25 Mr. Hinkle's property, and marijuana throughout the property,



1 marijuana on the hillside, where it actually is difficult to  
2 detect from plain view what is going on in the property, that  
3 the FBI needed a large truck and cart to haul all of the  
4 marijuana out from 4290 Donovan Road.

5 Mr. Hinkle took several photos of the marijuana that  
6 he was drying and growing. This is one from the cell phone.  
7 Government secured a search warrant to search his cell phone.  
8 This is Government's Exhibit 12, for the record. And he took  
9 those photos because he wanted to sell the marijuana.

10 This, turning to Government's Exhibit Number 16. This  
11 is a screenshot of a text message that Mr. Hinkle wrote to  
12 someone else, one of his associates.

13 This text message shows -- it's a list, essentially,  
14 of the different marijuana strains that he has available. At  
15 the end of the screenshot he writes: Am I missing anything on  
16 that list that you can think of?

17 These are -- this is Government's Exhibit 15. It's a  
18 photograph of dozens of marijuana plants.

19 And so, what these photographs illustrate is that  
20 Mr. Hinkle has a business distributing marijuana. In fact,  
21 other people know him to have a business distributing marijuana.

22 This is Government's Exhibit 17: Hey, you still  
23 running a tree business? Tree or trees is drug slang for  
24 marijuana.

25 **THE COURT:** Who responds LOL?

1           **MS. CHALBECK:** I believe that's Mr. Hinkle, Your  
2 Honor. But there are other text messages indicating that he  
3 sells marijuana.

4           This is Government's Exhibit 18. This is the text  
5 message conversation of that prior exhibit of the screenshot  
6 listing the different strains available.

7           And then at the end of the text message conversation,  
8 the list, there is a photograph that looks like -- potentially  
9 of a marijuana plant.

10           Government's Exhibit 19. This is a continuation of  
11 that same conversation. Someone writes: Ten more gone. Nice.  
12 I got rid of six more.

13           Whether Mr. Hinkle is the person in green or the  
14 person -- the text bubble in green or the text bubble in dark  
15 gray or black, both of these people are communicating about  
16 selling what's listed in the exhibit, the different strains of  
17 marijuana.

18           Government's Exhibit Number 20 -- Government's Exhibit  
19 Number 20, this is a continued conversation.

20           Mr. Hinkle and his associate are talking about other  
21 vendors looking to sell clones, and they are clones of marijuana  
22 plants.

23           And they are trying to devise a way to make their  
24 plants more marketable. Mr. Hinkle's associate offers: I think  
25 having natural soil shit will help draw people to us -- to us.

1 I might even borrow my daughter's auto plant for display.

2 Hinkle responds: Nice. I'm getting stuff around now  
3 too.

4 This is a continuation. This is Government's Exhibit  
5 Number 21. Mr. Hinkle's associate says: I'll bring the label  
6 maker. I'm not going to have time for potting.

7 Potting what?

8 Marijuana.

9 We have got plenty for tomorrow, so if we sell weed --  
10 a reference to marijuana -- the spot costs more.

11 Are you wanting to try selling bud? It's another  
12 reference to marijuana.

13 I'm not planning to. Then Mr. Hinkle responds -- he  
14 references clones. Clones of marijuana.

15 He also says: Sell some preroles, got some edibles.  
16 Edibles of marijuana.

17 **THE COURT:** So where is he selling this stuff, at a  
18 flea market, where he's got to pay for a spot or a booth or  
19 something like that?

20 **MS. CHALBECK:** Your Honor, I don't know the answer to  
21 that question right now.

22 **THE COURT:** I don't expect you to know it, but that's  
23 the question I've got.

24 Maybe Mr. Bogulski will tell me.

25 **MR. BOGULSKI:** Judge, my understanding is there is a

1 flea market or something in Salamanca on the Indian reservation,  
2 and that most of those text messages are attributable to a  
3 person that sells seeds or plants, and not to my client.

4 But I point this out -- this is very important, Judge,  
5 because this case -- I've had it for, I don't know, it seems  
6 like forever already.

7 And it's a little more than I expected when I took it  
8 on, to be candid with you, but here I am.

9 There is not one person that they talked to that said  
10 they have bought -- they have got some phones. They haven't  
11 verified these phones, whose message. They don't even know who  
12 it came from.

13 There is not one affidavit. We have the best law  
14 enforcement agency in the world, arguably, or one of the best in  
15 the FBI, and they don't have one person that has an affidavit  
16 that they can proffer to this Court that said, I bought, like, a  
17 nickel bag of weed or whatever they sell it in.

18 You know, I'm not too familiar with marijuana, but  
19 that I bought -- like, controlled buy.

20 So many of the drug cases I have when there is a  
21 complaint, there is a controlled buy or there is an informant or  
22 something like that.

23 Obviously, he's an avid marijuana grower. I don't  
24 think I could talk a jury out of that. But is this a 924(c)?

25 Is this really what this is? I don't think so. So

1 they don't have any customers of my client. I mean, I think it  
2 has a lot to do with other matters, as I've indicated, Judge.

3 So from our perspective, it's not a risk. It  
4 doesn't -- and we're looking at why we're here.

5 If this is true -- let's say it's true that he went  
6 with the guy who he gets his seeds from to grow marijuana, there  
7 are different types of it.

8 I suppose it gives you a different feeling when you do  
9 it. And they went to some convention that's in the open in  
10 Salamanca. And the public -- like, assuming everything they say  
11 with a common law demurrer, does that make him dangerous? I  
12 don't think so.

13 And then I was just looking at his record again from  
14 the probation department. He has a nonviolent misdemeanor  
15 welfare fraud conviction from 2008.

16 And that was when he was 31 years old. He's almost  
17 50 years old sitting here, Judge. And there is a very low rate  
18 of crime at that age.

19 And the fact that -- I think it's a stronger argument  
20 that we have, that the FBI came to his house and he didn't pull  
21 a gun and no one was hurt.

22 And if he's released, there will be a home inspection.  
23 There will be electronic monitoring, and the public will be  
24 protected and he's going nowhere.

25 **THE COURT:** So looking at his record, and looking at

1 his bail report now, October 25, 2023, he's got a lot of arrests  
2 while he was on bail.

3 Which to me, even if he was younger, it's still  
4 telling me something about an attitude toward compliance and his  
5 attitude towards law enforcement.

6 In 2005, a bench warrant and a violation of  
7 probation --

8 **MR. BOGULSKI:** Well, he was in his 20s, Judge. And  
9 I -- I joke around, the paralegal that works for me turning 25  
10 tomorrow, and I said, well, that's probably the only birthday  
11 you can really look forward to, because at 25, you can rent a  
12 car.

13 And there is data on these things, Judge. So when you  
14 look at a man before he has kids -- before he has children, when  
15 you're on probation or you're 25 or compared to 47, 2005, Judge,  
16 is almost 20 years ago.

17 And people -- people are different in their 20s. And  
18 that's why, I guess, even some places your car -- might not be  
19 able to rent a car until you are 30, but I know 25 for sure. I  
20 know your car insurance goes down when you are 30.

21 His last -- I mean, 2008, he's 31. And there is  
22 significant data that I keep referencing about what types of --  
23 how dangerous people are.

24 They are far more dangerous when they are in their  
25 20s. But my client wants to have an opportunity to be on

1 probation, Judge, and be with his wife.

2 And his son lives a mile from him, works at a Napa  
3 Auto Parts store, and be with his family.

4 I think that if the Wellsville police had a problem  
5 with my client, or Allegany County sheriffs, small areas, people  
6 can't hide there, Judge. And I think you would have seen some  
7 other arrests there that he doesn't have.

8 **THE COURT:** But what you are telling me, Mr. Bogulski,  
9 is I got to -- I can't look at all these things together.

10 He's got a felony, but he's got weapons. But he's --  
11 you know, in the country and he should be able to have weapons.  
12 Those two things are mutually exclusive.

13 Maybe he's selling marijuana, so he's not dangerous,  
14 but when you add the weapons to that, that becomes new felonies.

15 So if I put all of these things together, don't I have  
16 a problem?

17 **MR. BOGULSKI:** Judge, I disagree. I mean, I agree  
18 with Judge Roemer. I mean, I think -- and I agree with the  
19 probation department.

20 When you look at the context of weapons, they are not  
21 saying that he's a gang banger. Typical 924(c) that I see or  
22 that I represent someone on is a guy driving around with a 9  
23 milliliter high point that is using his gun to intimidate people  
24 for street -- you know, gang warfare that you see that you are  
25 on my corner, or you are with my crew.

1           And that's why they try to portray my guy as a  
2 motorcycle gang guy. He's not. They have no evidence of that.

3           They have no evidence that -- they didn't bring any  
4 pictures of any motorcycle Harley Davidson jackets and vests  
5 that these guys wear with their patches on them and things like  
6 that.

7           I've seen that in detention hearings. And I've seen  
8 photos of guys at Kingsman biker clubs and things like that.

9           My view, Judge, is that he's not dangerous. It was  
10 2008, when he was 31 years old.

11           So you can look at someone in their 20s and you can  
12 look at someone where they are now, but there is no allegation  
13 that -- there's a case I had, the public defender was Tracy  
14 Hayes and he defended it successfully almost 15 years ago now.

15           And the police came knocking on the door and they  
16 kicked the door in. And the guy had drugs in the house. And  
17 Tracy Hayes argued to the jury, he lives in the inner city.

18           When he pulled the gun -- the defendant on the police,  
19 a knock on the door is not actually a welcomed guest coming in  
20 that neighborhood.

21           The Government in a 924(c), it's not strict liability  
22 like the labor law 240 case.

23           They have to prove that he possessed those guns with  
24 the intent to advance his marijuana distribution business. And  
25 there is no evidence of that, number one.



1           There is no evidence that he sold marijuana. They  
2           can't bring in one person that bought the drugs from him, so  
3           that's what they have to prove to sustain a 924(c) conviction.

4           **THE COURT:** Some day? Some day, right? But we are  
5           doing pretrial detention right now. So either I make these  
6           connections or I don't, right?

7           **MR. BOGULSKI:** But there is nothing to make the  
8           connection. There is no allegation that he used -- he's a  
9           hunter, and everyone knows it.

10           And the police could have arrested him in Wellsville  
11           anytime he went -- I believe he hunted with muskets, which would  
12           be legal for him.

13           But, regardless, there is no allegation that he is  
14           using these guns to threaten other gang members or to harm  
15           anyone in the public.

16           **THE COURT:** But, Mr. Bogulski, even if we were just  
17           here on a single felony of felon in possession of a firearm,  
18           shouldn't I have some problems about a concern for the  
19           community, based on all of the other facts that we have heard  
20           here today?

21           **MR. BOGULSKI:** I disagree. Because in 2008, when he's  
22           31, it's a nonviolent misdemeanor conviction that he has. That  
23           is a nonviolent A misdemeanor.

24           He was sentenced to a conditional discharge, which is  
25           either, in my practice, a fine. There was no probation that he

1 was sentenced to.

2 So I -- you know, from my perspective, yes, if he had  
3 a violent felony conviction from 2008 or 2009 or 2010 or 2011 or  
4 2012, you get the point.

5 There is many years that have gone by without any  
6 violent convictions. And then, yes. Of course you would have a  
7 concern.

8 But to look at what has transpired over many years,  
9 Judge, I think my client certainly is not any risk of danger.

10 And with the resources of the Federal Government and  
11 the probation department and electronic monitoring and home  
12 search, that should allay the concerns that this Court has.

13 **THE COURT:** Ms. Chalbeck --

14 **MS. CHALBECK:** Your Honor, can I respond to all of  
15 that, please?

16 **THE COURT:** Of course.

17 **MS. CHALBECK:** Okay. Counsel has repeatedly brought  
18 up the lack of controlled buys.

19 I just want to underscore that the search warrant  
20 authorizing the search and seizure of evidence in Mr. Hinkle's  
21 residence wasn't related to guns and drugs.

22 A Federal magistrate judge found probable cause to  
23 believe that there was evidence of a conspiracy to retaliate  
24 against a dead Federal witness.

25 Conspiracy to retaliate; conspiracy to tamper with

1 that witness, so that's point number one.

2 The second point is that the standard for 924(c) is  
3 not is my client a gang banger. It is are firearms used or  
4 possessed in a way that confers, quote, an advantage relevant to  
5 the vicissitudes of drug trafficking. That's from United States  
6 versus Snow, Second Circuit.

7 And in making that determination under the 3142(g)  
8 factors as to whether there is -- in making that determination,  
9 you can consider the weight of the evidence.

10 And here, this is Government's Exhibit 29. In between  
11 a scale pictured on the desk and a storage bin full of marijuana  
12 behind a window overlooking marijuana plants are two firearms.

13 And that is just in addition to the 17 other firearms  
14 located in the residence, many of which were located  
15 strategically at points of ingress and egress, by doorways and  
16 hallways.

17 Ammunition by marijuana. Ammunition by the growth  
18 operation. That is in the exhibits that we offered to you.

19 Also, with regards -- I'm sorry.

20 **THE COURT:** A home -- not too long ago I talked to  
21 someone who scattered his weapons around the house for home  
22 defense purposes only, no drugs at all.

23 What's wrong with that?

24 **MS. CHALBECK:** Well, the connection here is that  
25 Mr. Hinkle has a drug distribution operation.

1           And counsel's initial argument was, my client doesn't  
2     sell drugs. Then it's, well, my client's not a gang banger.

3           But we know that he does sell drugs. He's selling  
4     drugs to people who want to give them to their granddaughters.

5           This is Government's Exhibit 24. He has security  
6     cameras in his residence -- or excuse me -- on the outside of  
7     his residence.

8           And that further supports the inference that he is  
9     preparing, or fortifying himself against a drug conflict,  
10    because most of his money probably comes from the 134 marijuana  
11    plants found on his residence.

12          Counsel also said, in relation to the standard: Well,  
13    my client is not a gang banger. That he doesn't have any  
14    contacts with a biker gang. He's not going to biker conventions  
15    or biker meet ups, biker gang meet ups. Something to that  
16    effect.

17          We would be willing to proffer, Your Honor, that  
18    contrary to counsel's representation, there is photographic  
19    evidence, not included in the exhibits we sent to the Court or  
20    gave to counsel -- there is photographic evidence in  
21    Mr. Hinkle's phone in which he is associating; he is taking  
22    pictures of members in a known biker gang in Wellsville, and is  
23    associating with these people.

24          So even if that were the standard, which it isn't,  
25    there is evidence of association here that supports a finding of

1 dangerousness under 3142(g).

2 **MR. BOGULSKI:** Judge, being in a biker -- I mean, my  
3 client is not in a biker gang, but that does not -- and people  
4 have a right to associate with people in a small community.

5 Again, I see a couple text messages. They don't  
6 identify who made those text messages. My client denies selling  
7 any drugs.

8 They have no one here that can come in and say that  
9 they bought marijuana from this man. Not one person. And they  
10 have had many days to get affidavits.

11 The Government has vast resources, as you are aware.  
12 My client is presumed innocent of these charges. There are  
13 conditions that will protect the public.

14 There are -- there will be a home inspection, if you  
15 order it. Obviously, it would be a condition of his release.  
16 And we feel that that's more than reasonable under the  
17 circumstances. And it's the least restrictive means.

18 It seems like my client -- this case can go on for a  
19 period of time and to have him locked up, when he hasn't had  
20 any -- anything on his record since 2008, would be a miscarriage  
21 of justice, when he is presumed to be innocent, when he doesn't  
22 have a passport, when the probation department has recommended  
23 his release, and when Magistrate Roemer had also indicated the  
24 support of that recommendation.

25 There are reasonable conditions which would be very

1 restrictive, which would be home confinement, that would require  
2 him to do everything and anything to keep himself on the  
3 straight and narrow, Judge.

4 And I think that's reasonable under the circumstances,  
5 especially based on the strong presumption of innocence.

6 **MS. CHALBECK:** May I respond to that, Your Honor?

7 **THE COURT:** Yes, briefly. And then I will give  
8 Mr. Bogulski the last word, if he wants it, or it sounds like he  
9 just had it. We'll see.

10 **MS. CHALBECK:** I just want the record to reflect that  
11 the last known conviction is not from 2008. It was not 16 years  
12 ago.

13 It was August 9th of this year, when he pleaded guilty  
14 to retail theft in Pennsylvania after stealing over a hundred  
15 dollars worth of cigarettes.

16 In addition, Mr. -- counsel continues to beat the drum  
17 that his client did not sell marijuana. There is ample text  
18 message evidence where people are asking to buy marijuana from  
19 him.

20 This is Government's Exhibit 25: Hey, when the plants  
21 are ready, I'm also going to need a couple of ounces.

22 I have some ready. That's for sure. Sounds like a  
23 drug dealer to me.

24 I also want to turn to Government's Exhibit 27. This  
25 goes to dangerousness, Your Honor.

1           Hey, just a heads up -- this is someone texting  
2   Mr. Hinkle -- Hey, just a heads up, I'm all out. Kids took what  
3   I had home. Let me know when good for you to get in touch.  
4   Looking for couple of ounces. Thanks, Howie.

5           Mr. Hinkle responds, is looking to sell drugs.

6           So this notation that there is not an affidavit  
7   because the Government is in the middle of investigating the  
8   death of a Federal witness in prosecuting Mr. Hinkle on four  
9   counts charged in this complaint, it's not needed right now.

10          There is ample evidence that he is a drug distributor.  
11   There is ample evidence that he uses firearms to protect his  
12   drugs.

13          He keeps them located right in between a scale and a  
14   bin full of marijuana overlooking pots of marijuana.

15          So, Your Honor, for those reasons, as well as those  
16   reasons stated in our brief, we would -- we would urge the Court  
17   to find that, one, Mr. Hinkle has not rebutted the presumption.

18          But even if he has, we've shown, I believe, by clear  
19   and convincing evidence that he poses a danger to the community.

20          That he is a flight risk owing to the strong incentive  
21   he has to flee, and that there is also a risk of obstruction  
22   here, that we could prove by a preponderance of the evidence.

23               **THE COURT:** Are we at that point, Mr. Bogulski, where,  
24   you know, no amount of marijuana sales is a danger to the  
25   community?

1           In other words, I have got defendants who come in here  
2 and tell me that their judgment is constantly impaired by  
3 marijuana, or they are diagnosed with Cannabis use disorder,  
4 which is just another way of saying they can't stop using it.

5           **MR. BOGULSKI:** Judge --

6           **THE COURT:** Is that where we are? It doesn't matter?  
7 Marijuana is good?

8           **MR. BOGULSKI:** That's not my argument, Judge, at all.

9           As I indicated, and then I think -- I know where  
10 you're going with this, as I drive by dispensaries.

11           I mean, personally I like the old law. Up to an ounce  
12 in New York was, I think, a hundred dollar fine, mostly an ACD.  
13 And if you smoked it in public, then it was a B misdemeanor up  
14 to 90 days.

15           I'm really tired of walking around smelling marijuana.  
16 Honestly, I don't care if people do it, but I don't want to  
17 smell it. The old law was pretty good, but it's not up to me.

18           What you have to decide, is does that make him  
19 dangerous. And, you know, do I like the dispensaries? No, not  
20 really.

21           But does -- with all that being said, that anyone can  
22 walk anywhere within ten minutes of me coming here to buy all  
23 this marijuana, does it make him, like, this dangerous guy?

24           If you -- they are speaking, the Government, in  
25 generalities. They are not saying that he, as I said, typical



1 924(c), that he's threatening anyone with guns.

2 They are not saying that he's using these guns to --  
3 like, who is he going to compete with? The dispensary in  
4 Salamanca with his hunting rifles?

5 I mean, he's going to intimidate them to say stop  
6 selling legal marijuana? Anyone and anywhere can buy marijuana,  
7 Judge, whether we like it or not.

8 But that strengthens my argument because it doesn't  
9 make it him dangerous, because he has nothing to protect but his  
10 family or whatever.

11 He's not involved in violent drug distribution. There  
12 is no allegation of that. And you have had many cases -- we all  
13 have had, where the allegation is that the individuals are  
14 involved in gang activity where they use their guns -- usually  
15 handguns, to intimidate other individuals to protect their drug  
16 turf.

17 When -- assuming, again, he denies selling it, but  
18 assuming if he did sell a small amount, does that make him a  
19 danger to the community, when you can go to a dispensary?

20 And is he using those guns to protect that limited  
21 amount of marijuana that they found? I think it does not make  
22 him dangerous, Judge.

23 I think the argument is strong, regardless of how I  
24 feel about smelling marijuana, when I walk down the street.

25 **THE COURT:** Ms. Linton, is there anything other than

1 what's in the bail report that you wish to add? I've got your  
2 release recommendation here.

3 **PROBATION OFFICER:** No, Your Honor. The only other  
4 thing I would add is we can't consider the weight of the  
5 evidence or the nature and circumstances of the crime itself.

6 We give a very small weight to it, so our report and  
7 recommendation is based on simply the characteristics of the  
8 defendant.

9 **THE COURT:** All right. Under 18 United States Code  
10 3142(e), I must independently determine if a condition or  
11 combination of conditions will reasonably assure Mr. Hinkle's  
12 appearance, as required, and the safety of any other person and  
13 the community.

14 If I find that no such condition or combination of  
15 conditions exist, I must order Mr. Hinkle detained pending  
16 trial.

17 I have given these arguments and facts a lot of  
18 consideration sitting up here and in the last several days  
19 leading up to now.

20 Two of the offenses that he's charged with carry  
21 maximum terms of imprisonment of ten years or more. Under the  
22 Controlled Substance Act, those are Counts Two and Three.

23 In addition, one of the charges falls under 924(c),  
24 possession of a firearm in furtherance of drug trafficking.

25 Pursuant to 3142(e)(3), a rebuttable presumption

1 applies if probable cause exists to believe that Mr. Hinkle  
2 committed at least one of these offenses.

3 And because he has not been indicted, I must make a  
4 probable cause determination myself. I have carefully  
5 considered everything that has been presented to me in writing  
6 and here today by proffer, as well as what I've read on the  
7 transcript from Judge Roemer and the affidavit of Special Agent  
8 Adam Pena (phonetic) submitted in support of the criminal  
9 complaint.

10 Based on all of that, I find that for the reasons set  
11 forth in the Pena affidavit and, again, what I've heard,  
12 submitted to me already here, on this motion by the Government,  
13 that probable cause exists to believe that Mr. Hinkle maintained  
14 a drug involved premises; possessed marijuana with intent to  
15 distribute, and 100 more -- 100 or more marijuana plants, and  
16 possessed firearms in furtherance of drug trafficking crimes, so  
17 that means the rebuttable presumption applies.

18 I further find that he has, like Judge Roemer has, he  
19 has introduced evidence to rebut the presumption that no  
20 condition or combination of conditions will reasonably assure  
21 his presence in Court or the safety of the community if he was  
22 released pending trial.

23 I've considered all of the factors in the 3142(g),  
24 including all subsections, specifically the nature and  
25 circumstances of the offense, weight of the evidence,

1 Mr. Hinkle's history and characteristics and the danger to the  
2 community.

3 In particular, regarding the 3142(g) factors, I'm  
4 considering the charges themselves and what I have heard about  
5 them.

6 I'm considering the quantities of plants and firearms.  
7 I'm considering the SWAT team's effort to clear the residence;  
8 the difficult circumstances to clear the house, and the danger  
9 that his actions in sequence created.

10 I'm considering the placement of his weapons, and all  
11 of this bears on danger to the community as well.

12 Regarding weight of the evidence, I'm considering the  
13 proffers regarding the marijuana, the text messages, the sales,  
14 et cetera, and the firearms in conjunction with the marijuana  
15 sales and in conjunction with the growing of marijuana and in  
16 conjunction with the felony.

17 And I'm considering his questionable employment  
18 situation, as well, in terms of where is the money coming from  
19 to support himself month to month.

20 I'm considering the criminal history. I'm considering  
21 his family and community ties and everything that we have heard  
22 from Mr. Bogulski on that front here and in front of Judge  
23 Roemer.

24 I'm considering his mental health and his substance  
25 abuse. I'm also considering his intent to self harm, which is

1 the December of 2021 threat to kill his wife and himself.

2 The threat to his wife is a community danger concern.  
3 The threat to kill himself is a nonappearance concern, so I'm  
4 considering those topics as well.

5 The Crystal Quinn proffers are worth considering, even  
6 if they are not independently sufficient to detain the  
7 defendant, but they are not irrelevant, for sure.

8 Regarding the danger to the community, there is the  
9 grow operation that I'm considering. Also, the firearms. And I  
10 mentioned the threat to kill his wife or his common law wife.

11 And I'm considering the -- for what it is worth,  
12 the -- what I've heard here today regarding the death of Crystal  
13 Quinn and the statement about her having a bounty on her life,  
14 which is corroborated by someone other than Mr. Gogolack.

15 I've considered also his conduct when the agents were  
16 clearing his house. My analysis of these factors is based on  
17 consideration of everything that has been presented to me,  
18 including the transcript in front of Judge Roemer from October  
19 26th.

20 I've considered the pretrial services report from  
21 October 25; the criminal complaint and the accompanying  
22 affidavit.

23 I find by clear and convincing evidence that  
24 Mr. Hinkle's release would pose a danger to the safety of others  
25 in the community, and that no condition or combination of

1 conditions will assure the safety of others or the community if  
2 Mr. Hinkle were released pending trial.

3 I based that conclusion on all of the facts and  
4 factors that I just discussed.

5 Because I found that the Government established  
6 Mr. Hinkle's danger to the community by clear and convincing  
7 evidence, I need not decide whether his release would pose a  
8 risk of flight.

9 And I think it's worth noting -- and I've given in  
10 this some thought throughout the days and also sitting here,  
11 too, that in my judgment, the outcome here today, which is  
12 detention pending trial, would be the same outcome even if there  
13 were no presumption under all the facts and circumstances.

14 The transcript of my oral ruling will constitute my  
15 written findings and the decision on the Government's motion.

16 The Government's motion is granted and Judge Roemer's  
17 release order is revoked. Mr. Hinkle is remanded to the custody  
18 of the U.S. Marshals Service.

19 But hang for just a minute, folks, we're going to talk  
20 about some housekeeping while we're here.

21 If there is ever a CR case here, Ms. Chalbeck, there  
22 should be a case related form, per clerk's office policy, so  
23 that the time that one District judge invests in a case isn't  
24 wasted if it is assigned inadvertently to another District  
25 judge, which sometimes happens. So a case related form would be

1 called for, if there is a CR case ultimately.

2 Is there -- where is Mr. Hinkle housed right now?

3 **MR. BOGULSKI:** Chautauqua County, Judge. Mayville.

4 **THE COURT:** Chautauqua County. And do I need to be  
5 concerned or does anybody need to be concerned, the Marshal  
6 Service, for example, about placement of this defendant,  
7 Mr. Gogolack, a defendant in another case, where that other  
8 person was supposed to be a witness up in Niagara County, et  
9 cetera?

10 Should all three of these folks be held in separate  
11 places? Are they currently held in separate places?

12 **MS. CHALBECK:** Judge, I believe we've addressed that  
13 concern. Thank you.

14 **THE COURT:** All right. Very well. Anything further  
15 from the Government?

16 **MS. CHALBECK:** No, thank you, Your Honor. And your  
17 note regarding the case related form is taken.

18 **THE COURT:** All right. We will issue the proper text  
19 order under Subsection I, after we're done here today or  
20 tomorrow morning.

21 Mr. Bogulski, anything further from the defendant?

22 **MR. BOGULSKI:** No. Have a good weekend, everybody.

23 **THE COURT:** All right. Thank you, everybody.

24 (Proceedings concluded at 4:31 p.m.)

25 \* \* \*

1  
2 In accordance with 28, U.S.C., 753(b), I certify that these  
3 original notes are a true and correct record of proceedings in  
4 the United States District Court for the Western District of  
5 New York before the Honorable John L. Sinatra, Jr.

6  
7  
8  
9  
10 s/ Bonnie S. Weber  
Signature

December 18, 2023  
Date

11  
12 **BONNIE S. WEBER, RPR**

13 Official Court Reporter  
14 United States District Court  
Western District of New York  
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